



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 8 2014

Mr. James R. O'Conner
HSE Manager
Truesense Imaging, Inc.
1964 Lake Avenue
Rochester, NY 14615

**RE: MACT Applicability Determination, 40 C.F.R. Part 63, Subpart BBBBB
Truesense Imaging, Inc. Facility, Rochester, New York**

Dear Mr. O'Conner:

I am writing in response to the April 2, 2012 request by Truesense Imaging, Inc. (Truesense) for an applicability determination by the United States Environmental Protection Agency (EPA), Region 2, assessing whether Truesense's semiconductor fabrication business (Semiconductor Business) located at its microelectronics wafer fabrication facility (FAB Facility) in Rochester, NY is subject to the National Emissions Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, 40 C.F.R. Part 63, Subpart BBBBB (Semiconductor MACT).

The April 2nd request was supplemented with additional information on May 24, 2012, August 24, 2012, and September 4, 2012. Before the Semiconductor Business was sold to Truesense on November 15, 2011, it was owned and operated by the Eastman Kodak Company (Kodak) and continues to be located within the same building,¹ using the same process and on the same land previously owned by Kodak. Kodak, through counsel, contacted EPA before the sale, requesting an applicability determination under the Semiconductor MACT for the Semiconductor Business, if it were sold to a third party. Kodak's request is detailed in two letters, dated September 12, 2011 and October 4, 2011. Truesense's request provides further information to EPA regarding its Semiconductor Business and confirmed that it is now the owner of the Semiconductor Business described in the September 12, 2011, and October 4, 2011, letters. Truesense's request references the Kodak letters in support of its argument.

¹ According to Truesense, in 1981, a five story addition to the south side of the building was completed. That addition is what is referred to as the FAB Facility. It was and is a clean room area where semiconductors are manufactured. The rest of the building contains R&D labs, Truesense offices, and non-Truesense tenants.

Facility Background and Arguments

According to the September 12, 2011, letter, the Eastman Business Park complex owned by Kodak is a major source of hazardous air pollutants (HAPs). In 1981, Kodak completed construction of the FAB Facility at its Eastman Business Park complex. At that time, Kodak also began operation of a semiconductor process unit in the Semiconductor Business at the FAB Facility. The Semiconductor Business' combined potential to emit (PTE) of HAPs was approximately 13.25 tons per year (tpy) and the highest individual HAP PTE (hydrogen fluoride) was approximately 4.2 tpy. Kodak further mentions that even after it added some new emission sources to the semiconductor manufacturing process, the PTE for the Semiconductor Business remained below major source thresholds. Nevertheless, pursuant to 40 C.F.R. § 63.7181(a) of the Semiconductor MACT, since May 22, 2006 (the compliance date for existing sources subject to the Semiconductor MACT) the Semiconductor Business has been subject to the Semiconductor MACT because Kodak owned and operated a semi-conductor manufacturing process unit located at, or part of, a major source of HAPs.

Truesense states that since it has taken over ownership and operation of the Semiconductor Business and the FAB Facility, it continues to operate below major source thresholds. Truesense and Kodak argue that EPA's "Once in Always in Policy" should not apply because the Semiconductor Business is a true minor source prior to the compliance date of the Semiconductor MACT and the sale of the FAB Facility to Truesense created a stand-alone facility meeting area source HAP emissions. Truesense asserts that EPA's Applicability Determination M000013, for the Equilon Enterprises LLC's Gasoline Distribution Facility in Lima Ohio, supports its view that its Facility should be reevaluated for applicability.

Truesense further states that it owns the land and building that house the Semiconductor Business and the FAB Facility, which are no longer part of Kodak's Eastman Business Park complex.² Truesense purchases from Kodak steam, electricity, chilled water and utility grade nitrogen, which are delivered via existing piping/wiring systems and metered for actual usage. Truesense provides two materials, ultra pure nitrogen and silane, to Kodak. Truesense states that it does not use the utility grade nitrogen as part of its semiconductor manufacturing process, but rather, uses it strictly for tenants within its FAB Facility. According to Truesense, each service is owned by Kodak to a point of

² While Truesense indicates that there are no other operations or businesses located at its FAB Facility, there are two tenants, Kodak's Microelectromechanical Systems group and Carestream, located at its building. Those tenants each have their own Title V permit. Additionally, Truesense leases space in a Kodak building located at the Eastman Business Park. The lease is for rented space and utilities provided by Kodak, which are unrelated to Truesense's Semiconductor Business. According to the NYS Department of Environmental Conservation (NYSDEC), Carestream operates labs on the 7th floor of the Truesense building. The labs have an R&D phosphor development group and R&D emulsion group which support Carestream's larger film and phosphor operations. These operations are all exempt from permitting. NYSDEC also states that Kodak's Micro-Electro-Mechanical Systems (MEMS) manufacturing/assembly and related R&D are conducted in Truesense's building. These operations are included in Kodak's Title V permit under EU U-00083, Process Y10. These operations have existed in the building for many years, but were only R&D exempt from permitting prior to 2009, after which Kodak applied for a permit for production of commercial products. Kodak's MEMS operations consist of six emission sources vented to six emission points and are not subject to MACT or VOC RACT rules, just NYS's Part 212.4 requirements.

demarcation (valve) external to the FAB Facility, and Truesense maintains and owns what it has purchased from Kodak, after the points of demarcation. The industrial and sanitary sewers are similarly connected, with Truesense owning and maintaining lines to a point of demarcation (main) from which Kodak assumes ownership. Truesense provides ultra-pure nitrogen and silane to its tenants.

Regulatory Background

EPA finalized the Semiconductor MACT on May 22, 2003. *See* 68 Fed. Reg. 27925. Pursuant to 40 C.F.R. § 63.7181(a), an owner or operator is subject to the Semiconductor MACT if it owns or operates a semiconductor manufacturing process unit³ that is a major source of HAP emissions or that is located at, or is part of, a major source of HAP emissions. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the PTE, considering controls, in the aggregate, any single HAP at a rate of 10 tpy or more or any combination of HAPs at a rate of 25 tpy or more. 40 C.F.R. § 63.7181(b). The Semiconductor MACT applies to each new, reconstructed, or existing affected source that manufactures semiconductors. 40 C.F.R. § 63.7182(a). An existing affected source is not a new⁴ or reconstructed⁵ affected source unless it meets the definition of a new or reconstructed affected source. 40 C.F.R. § 63.7182(e). An existing affected source must comply with the emission standards for existing sources no later than 3 years from May 22, 2003. 40 C.F.R. § 63.7183(b).

Discussion

Once a facility is subject to the Semiconductor MACT the source must comply with the standard by the compliance date. The Semiconductor MACT defines “existing affected source” as a source that is not a new or reconstructed affected source. 40 C.F.R. § 63.7182(e). The semiconductor manufacturing process unit at the FAB Facility was an existing source when Kodak had to comply with the Semiconductor MACT and continues to be an existing source even after Truesense purchased and took control of the Facility. Pursuant to 40 C.F.R. § 63.7183(b), the compliance date for an existing source is no later than 3 years from May 22, 2003, that is, May 22, 2006. This is the compliance date that is relevant to this determination and continues to apply to this Facility.

³ Pursuant to 40 C.F.R. § 63.7195, “semiconductor manufacturing process unit” is defined as the collection of equipment used to carry out a discrete operation in the semiconductor manufacturing process. The regulation further lays out what that may include.

⁴ A “new source” means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under the Semiconductor MACT establishing an emission standard applicable to such sources. 40 C.F.R. § 63.2. “New affected source” means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Clean Air Act Section 112(c) source category or subcategory that is subject to a Clean Air Act Section 112(d) or other relevant standard for new sources. 40 C.F.R. § 63.2. Pursuant to 40 C.F.R. § 7182(c) an affected source is a new affected source if construction of the affected source was commenced after May 8, 2002, and the applicability criteria in § 63.7181 are met at the time of construction.

⁵ Pursuant to 40 C.F.R. § 63.7182(d) an affected source is a reconstructed affected source if the criteria for “reconstruction” are met as defined in § 63.2. A new or reconstructed affected source must comply with the emission standards no later than May 22, 2003 if the affected source starts up before May 22, 2003, or after May 22, 2003 if the affected source starts up after May 22, 2003.

EPA Applicability Determination M000013, for the Equilon Enterprises LLC's Gasoline Distribution Facility (GDF) in Lima, Ohio, does not apply in this instance. For that Determination, while the GDF at the time of compliance was part of an oil refinery subject to the Refinery NESHAP, which incorporated provisions of the GDF NESHAP and the Bulk Gasoline Terminal (BGT) NSPS, it was only when the GDF was sold to another company that the GDF was no longer within a contiguous area and under common control of the oil refinery. While Truesense may believe this is similar to its situation, the GDF NESHAP allows for a re-evaluation of an "affected source" subject to the GDF NESHAP when the source is no longer commonly controlled. The Semiconductor MACT does not have a similar provision allowing for a re-evaluation of applicability. The FAB Facility is and continues to be an existing source with compliance required as of 2006 and is required to comply with the Semiconductor MACT, even after a sale.

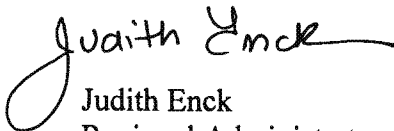
It is EPA's position, in accordance with the "Once In Always In Policy"⁶ that if a source is a major source on the compliance date of the relevant MACT standard, the source is subject to the MACT standard and will remain subject to that standard as long as the source otherwise continues to meet the definition of an affected facility (i.e., major source status notwithstanding).

Determination

EPA Region 2 concludes that Truesense, the current owner and operator of the Semiconductor Business, must continue to comply with the Semiconductor MACT.

If you have any questions, please contact Gaetano LaVigna of my staff at (212) 637-4069.

Sincerely,



Judith Enck
Regional Administrator

cc: Leo Bracci, Esq, Regional Attorney, NYSDEC Region 8
Thomas Marriott, Division of Air Resources. NYSDEC Region 8
Bernette Schilling, Division of Air Resources. NYSDEC Region 8
Roger T. McDonough, Division of Air Resources. NYSDEC Region 8

⁶ See The May 16, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, titled "Potential to Emit for MACT Standards – Guidance on Timing Issues," commonly referred to as the "Once In Always In" policy." The policy uses the term "first substantive compliance date," to define the first date by which an existing source must comply with any non-recordkeeping or non-reporting requirement in a MACT standard.